

REGULATORY REVIEW CHECKLIST

To accompany Preliminary Determination Package

Agency Department of Medical Assistance Services

Regulation title Nursing Home Prospective Payment System

Purpose of the regulation Authorize a new reimbursement methodology for nursing home services.

Summary of items attached:

- Item 1:** An explanation of the specific reason for the proposed regulation.
- Item 2:** A statement identifying the source of the agency legal authority to promulgate the contemplated regulations and a statement as to whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate. **(Be sure to attach a copy of all cited legal provisions).**
- Item 3:** A statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function.
- Item 4:** A statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered (to the extent known), and the reasoning by which the agency has rejected any of the alternatives considered.

/s/ Dennis G. Smith
Signature of Agency Head

8/20/99
Date

VPS 8/23/99
Date forwarded to
DPB & Secretary

PRELIMINARY JUSTIFICATION FOR REGULATORY ACTION
UNDER EXECUTIVE ORDER TWENTYFIVE (98)

I. IDENTIFICATION INFORMATION

Regulation Name: Nursing Home Prospective Payment System

Issue Name: Nursing Home Prospective Payment System

VAC Numbers: 12 VAC 30 Chapter 90

Registrar's Filing Deadline: October 6, 1999

II. LEGAL AUTHORITY

Agency Legal Authority: Code of Virginia §§32.1-324 and 32.1-325; 42 U.S.C. §1396.

Director Approval of Action: /s/ Dennis G. Smith 8/20/99
Dennis G. Smith Date

III. JUSTIFICATION

1. Statement of Reason for Regulation

The current Nursing Home Payment System (NHPS) has been in place since 1991. Both the Department and provider representatives are in general agreement that the system is due for major revisions. Moreover the 1999 General Assembly abolished, effective July 1, 2000, the authority for the Department to recover past payment of depreciation expense paid to facilities, upon sale of facility assets. Change in the reimbursement methodology for capital costs, at minimum, is required or the Commonwealth could be at risk of significantly increased expenditures as a result of the sale of facilities after July 1, 2000.

2. Federal/State Mandate and Scope

Federal and state law require that the methodology used by the Medicaid agency to set nursing facility rates be specified in the State Plan for Medical Assistance. Therefore, if the Department wishes to change the existing methodology, it must amend existing

regulations. However there is no federal or state mandate explicitly requiring that a new methodology or new regulations be adopted at this time.

3. Essential Nature of Regulation

This regulation is needed to:

1. Incorporate in the payment system recent improvements in measurement of resident service intensity. The current method adjusts for three levels of resident intensity and has three additional separate categories for residents with very intense service needs who are cared for in specially qualified facilities. Since implementation of these methods, more sophisticated measurement tools have been developed that use up to 44 resident categories to adjust payment for resident service intensity. It is time for the Department to adopt such an improved approach.
2. Make reimbursement of operating cost more prospective. Presently, a complex formula is used to set a facility's rate which takes into account both the facility's own cost and a median cost calculated across comparable facilities. The Department's goal is to set rates that are not facility specific but that are established in advance and that set a fair price based on the service provided rather than which facility provides it.
3. Make payment of capital costs fairer to providers and more administratively efficient for the Commonwealth. Presently the Department pays the facility's actual expense related to depreciation and interest. This creates an incentive for providers to maximize the extent that assets are leveraged and does not foster quick retirement of debt. As many states have done, the Department wishes to pay a fair price for capital assets but wants to sever the tie between Medicaid payment and the details of the facility's financing decisions. This will allow nursing facilities to manage their own businesses prudently, free from interference from perverse reimbursement incentives.

It is anticipated that the regulation will be budget neutral.

This regulatory action will have no impact on local departments of social services.

4. Agency Consideration of Alternatives

The regulation is intended to authorize a new payment system that will be less complex and burdensome for both the Department and the providers. It has been developed in consultation with provider representatives and takes their views into account. In addition the Agency will consider any alternatives identified through the public comment process.

5. Family Impact Assessment (Code of Virginia §2.1-7.2)

This regulation has no impact on families. The methodological details of Medicaid reimbursement to nursing facilities has no discernable impact on families.